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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 JAMES KENNETH MCCALLUM,

7 Plaintiff,

8 v.

9 DR. NAUGHTON, *et al.*,

10 Defendants.

Case No. 3:19-cv-00243-MMD-WGC

THREE STRIKES ORDER

11  
12 **I. DISCUSSION**

13 *Pro Se* Plaintiff James Kenneth McCallum submitted a civil rights complaint  
14 (“Complaint”) pursuant to 42 U.S.C. § 1983 and an application to proceed *in forma*  
15 *pauperis* on May 10, 2019. (ECF Nos. 1-1, 1.) However, on at least three prior occasions,  
16 the Court has dismissed civil actions commenced by Plaintiff while in detention as frivolous  
17 or for failure to state a claim upon which any relief may be granted.<sup>1</sup>

18 Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on [three] or more prior  
19 occasions, while incarcerated or detained in any facility, brought an action or appeal in a  
20 court of the United States that was dismissed on the grounds that it is frivolous, malicious,  
21 or fails to state a claim upon which relief may be granted,” he may not proceed *in forma*  
22 *pauperis* and, instead, must pay the full \$400.00 filing fee in advance unless he is “under  
23 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

24 In his complaint, Plaintiff seeks an extra mattress due to compression fractures and  
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27 <sup>1</sup>See *McCallum v. Thompson*, 2:06-cv-00456-RCJ-RJJ (dismissed as frivolous on  
28 May 24, 2006); *McCallum v. Nevens*, 2:13-cv-00962-JAD-NJK (dismissed for failure to  
state a claim on November 22, 2013); and *McCallum v. Koehn*, 3:16-cv-00658-MMD-VPC  
(dismissed for failure to state a claim on November 7, 2017). The Court takes judicial  
notice of its prior records in the above matters.

1 arthritis from a fall he took over 20 years ago. (See *generally* ECF No. 1-1.) An extra  
2 mattress would alleviate his pain. (*Id.*) The Court finds that these allegations fail to  
3 plausibly allege that Plaintiff is in imminent danger of serious physical injury. See *Andrews*  
4 *v. Cervantes*, 493 F.3d 1047, 1055–56 (9th Cir. 2007) (holding that the exception to §  
5 1915(g) applies if the complaint makes a plausible allegation that the prisoner faced an  
6 ongoing danger of serious physical injury at the time of filing). As such, Plaintiff must pre-  
7 pay the \$400.00 filing fee in full.

## 8 **II. CONCLUSION**

9 For the foregoing reasons, it is ordered that Plaintiff's application to proceed *in*  
10 *forma pauperis* (ECF No. 1) is denied.

11 It is further ordered that this action will be dismissed without prejudice unless  
12 Plaintiff pays the \$400.00 filing fee in full within 30 days of entry of this order.

13 It is further ordered that the Clerk of the Court will send Plaintiff two copies of this  
14 order. Plaintiff will make the necessary arrangements to have one copy of this order  
15 attached to the check paying the filing fee.

16 It is further ordered that the Clerk of the Court will retain the Complaint (ECF No. 1-  
17 1) but will not file it at this time.

18 DATED THIS 16<sup>th</sup> day of March 2020.

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MIRANDA M. DU  
22 CHIEF UNITED STATES DISTRICT JUDGE  
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